

## **REMARKS**

The Examiner's time to discuss the instant case by telephone is very much appreciated. Reconsideration and withdrawal of the Examiner's rejections under 35 USC 102 is requested in view of the foregoing amendments remarks:

### ***Election/Restriction***

Affirmation of the provisional election with traverse to prosecute the invention of Group III, claim 19 is made by the Applicants and withdrawal of claims 1-18 from further consideration. Applicants respectfully point out that a prior art search of the product-by-process claim (claim 19) would necessarily involve the search for the process itself as claimed in claims 1 to 18. Therefore, Applicants respectfully request that the restriction requirement be withdrawn because the searching of the two claim sets would not be an undue burden on the Examiner.

### **Information Disclosure Statement**

Applicants respectfully request the Examiner to return the signed Form 1449 for the Supplemental IDS mailed on April 17, 2001, a copy of which is enclosed for the Examiner's convenience.

### **Specification**

The Examiner asserts that the title of the invention is not descriptive and that a new title is required that is clearly indicative of the invention to which the claims are directed. In response, applicants have amended the title according to the Examiner's kind suggestion.

### **Claim Objections**

The Examiner has objected to claim 19 because claim 19 is dependent upon a non-elected claim, as such, the claim if allowed would be indefinite because the limitations of the product are not clearly set forth. The Examiner recommends that applicant amend claim 19 to recite all the limitations of the claim(s) from which claim 19 depends, in claim 19.

**35 USC § 102**

The Examiner has rejected claim 19 under 35 USC 102(b) as being anticipated by Slocum (US Pat. 5,834,410) asserting that Slocum teaches a shaped detergent/soap bar having a cross-sectional area that varies along at least part of its length (Fig. 5, 6, and 11). The Examiner further asserts that the Court of Appeals for the Federal Circuit, in *In re Thorpe*, 227 USPQ 964, held that determination of patentability in 'product-by-process' claims is based on the product itself, even though such claims are limited and defined by the process, and thus the product in such claim is unpatentable if it is the same as, or obvious from, the product of prior art, even if the prior product was made by a different process. (See MPEP § 2113.)

In addition, the Examiner has rejected claim 19 under 35 USC 102(b) as being anticipated by Marek (US Pat. 4,746,452), asserting that Marek teaches a shaped detergent/soap bar having a cross-sectional area that varies along at least part of its length (Figs. 1-4). Applicants respectfully traverse these rejections.

The Examiner cites *In re Thorpe* for the proposition that determination of patentability in a "product-by-process" claims is based on the product itself, even though such claims are limited and defined by the process, and thus the product in such claims is unpatentable if it is the same as, or obvious from, the product of the prior art, even if the prior art was made by a different process. However, once a product appearing to be substantially identical is found by the Examiner, and a 35 USC 102/103 rejection is made, **the burden shifts to the applicant to show an unobvious difference.** *In re Fessman*, 180 USPQ 324, 326 (CCPA 1974) MPEP 2173.05p.

Slocum relates to complex bar shapes made by "conventional molding technology" (col. 5, lines 9-10), where the final article shape takes its form from the mold used to fabricate the article. Therefore, Slocum teaches away from a shaped detergent bar produced by a process comprising extruding a detergent composition through a die such that the cross-sectional area is varied continuously during at least part of the time the extrusion is occurring. In other words, the final article of Slocum takes its shape from the mold used to fabricate the article and is not made by a variable extrusion process as claimed in the instant case.

Likewise, Marek discloses a complex bar shape but not the process used to make it. Like Slocum, such a complex shape would probably be either molded or stamped in view of one skilled in the art due to its complex and intricate shape and, therefore, would teach away from the product produced by the process as currently claimed.

The prior art made of record and not relied on by the Examiner, i.e., Benitez, Haskell, LeVier, Joshi, DeGaye, and Mottola either singly, or in combination, do not remedy the deficiencies of Slocum and Marek with respect to the instant invention as presently claimed.

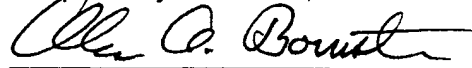
Applicants respectfully assert that they have met their burden of showing novel and unobvious differences in the art cited by the Examiner as required in *In re Fessman (supra.)*.

In summary, by the present amendment, claim 19 has been amended and claims 1-18 have been tentatively cancelled without prejudice. Claims 20-31 have been added. Applicants submit that no new matter has been added by these amendments.

#### **CONCLUSION**

In light of the above amendments and remarks, applicants submit that all claims now pending in the present application are in condition for allowance. Reconsideration and allowance of the application is respectfully requested. If a telephone interview would facilitate prosecution of the application, the Examiner is invited to contact the undersigned.

Respectfully submitted,



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**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

**IN THE SPECIFICATION:**

Please amend the title to read:

~~Process for the Manufacture of Shaped Articles~~ Shaped Detergent Bar

**IN THE CLAIMS:**

Please cancel claims 1-18 if the restriction requirement is maintained.

Please amend claim 19 as follows.

Please add new claims 20-31.

19. (Amended) A shaped detergent bar ~~obtainable~~produced by the process of claim 1 ~~comprising the steps of:~~

- a. extruding a detergent composition in an extrudable form through a die comprising at least one orifice characterised in that the cross-sectional area for flow through the said at least one orifice is varied continuously during at least part of the time said extrusion is occurring; and
- b. obtaining an extrudate whose cross-sectional area varies along at least a part of its length.

20. The bar of claim 19, wherein the volumetric flow rate is varied by varying the pumping rate used to deliver the extrudate to the nozzle.

21. The bar of claim 19, wherein the volumetric flow rate is varied by varying the internal volume of a chamber through which the extrudate is delivered to the nozzle.

22. The bar of claim 19, in which the orifice is constructed at least in part from an elastically deformable material.

23. The bar of claim 19, in which the orifice is constructed of at least two parts which define its cross-sectional area and at least one part can be moved relative to the other so as to vary its cross-sectional area.

24. The bar of claim 23, in which the orifice is of an iris diaphragm construction.

25. The bar of claim 23, in which the orifice is constructed of at least two adjacent cylinders, the cylinders having substantially parallel axes of rotation and being positioned so their circumferential surfaces are in contact, the axes of rotation being substantially normal to the direction of extrusion, the orifice being defined by a contoured region of the circumferential surface of at least one of the cylinders, the cross sectional area defined by the said contoured region or regions varying with the rotation of the cylinders.

26. The bar of claim 19, in which a primary volumetric flow rate is kept substantially constant during extrusion.

27. The bar of claim 19, in which a secondary volumetric flow rate is varied during extrusion.

28. The bar of claim 19, in which the die comprises more than one orifice whose cross-sectional area for flow is varied during extrusion.

29. The bar of claim 26, in which the cross-sectional areas of the orifices are coordinated such that the sum of the cross-sectional areas remains substantially constant during extrusion.

30. The bar of claim 19, in which the total cross-sectional area for flow through the orifice or orifices and the secondary volumetric flow rate are controlled with respect to each other.

31. The bar of claim 19, in which the temperature of at least part of the die is controlled during the extrusion process.